

# DUMPING AT SEA CONTROL ACT 73 OF 1980

[ASSENTED TO 27 MAY, 1980]

[DATE OF COMMENCEMENT: 23 APRIL, 1982]

*(Afrikaans text signed by the State President)*

## ACT

**To provide for the control of dumping of substances in the sea.**

### 1 Definitions

(1) In this Act, unless the context otherwise indicates—

**"aircraft"** means airborne craft of any type whatsoever, whether self-propelled or not;

**"dump"**, in relation to any substance, means to deliberately dispose of at sea from any vessel, aircraft, platform or other man-made structure, by incinerating or depositing in the sea, but does not include to—

- (a) dispose at sea of any substance incidental to or derived from the normal operations of any vessel, aircraft, platform or other man-made structure and its equipment, other than dispose of any substance from any vessel, aircraft, platform or other man-made structure operated for the purpose of disposing of such substance at sea;
- (b) lawfully deposit at sea any substance for a purpose other than the mere disposal thereof;

and "dumping" has a corresponding meaning;

**"master"**, in relation to any vessel, means any person (other than a pilot) having charge of such vessel;

**"Minister"** means the Minister of Industries;

**"pilot"**, in relation to any aircraft, means any person having charge of such aircraft;

**"regulation"** means a regulation made under section 8;

**"sea"** means the territorial waters of the Republic as defined in section 2 of the Territorial Waters Act, 1963 (Act 87 of 1963), and includes the sea between the high-and low-water marks;

**"Secretary"** means the Secretary for Industries or any person acting under his authority;

**"vessel"** means waterborne craft of any type whatsoever, whether self-propelled or not.

(2) In relation to any matter affecting the Railways and Harbours Administration, the Minister shall only act in terms of this Act with the concurrence of the Minister of Transport Affairs.

### 2 Loading and dumping prohibited or restricted

(1) Any person who—

- (a) dumps any substance mentioned in Schedule 1;
- (b) (i) dumps any substance mentioned in Schedule 2;

- (ii) loads any such substance onto any vessel, aircraft, platform or other man-made structure at sea for dumping; or
- (iii) deliberately disposes at sea of any vessel, aircraft, platform or other man-made structure,

except under the authority of and in accordance with the provisions of a special permit under section 3; or

- (c) (i) dumps any other substance; or
- (ii) loads any such substance on to any vessel, aircraft, platform or other man-made structure at sea for dumping,

except under the authority of and in accordance with the provisions of a general permit under section 3, shall be guilty of an offence, unless the substance in question was dumped for the purpose of saving human life or securing the safety of the vessel, aircraft, platform or other manmade structure at sea in question or any other vessel, aircraft, platform or other manmade structure at sea or of preventing damage to the vessel, aircraft, platform or other man-made structure at sea in question or to any other vessel, aircraft, platform or other man-made structure at sea, and such dumping was necessary for such purpose or was a reasonable step to take in the circumstances.

(2) The onus of proving any exception, exemption or qualification contemplated in subsection (1) shall be upon the accused.

(3) If any person who commits an offence referred to in subsection (1) is not the master or owner of the vessel, or the pilot or owner of the aircraft, in question, or person in charge of or the owner of the platform or other man-made structure in question, the master of such vessel or pilot of such aircraft or person so in charge and, if he is not the owner of such vessel, aircraft, platform or other man-made structure, also the owner thereof, shall in addition to the person who committed the said offence, be guilty of an offence, unless such master or pilot or person so in charge, and such owner, where he is not such master or pilot or person so in charge, proves that he did not permit or connive at such first-mentioned offence and that he took all reasonable measures, in addition to forbidding it, to prevent such offence being committed.

(4) The provisions of subsection (3) shall not relieve the person committing an offence referred to in subsection (1) of liability to be convicted and sentenced in respect of such offence.

(5) Where dumping has taken place in pursuance of any exception, exemption or qualification contemplated in subsection (1), the master of the vessel or the pilot of the aircraft or the person in charge of the platform or other man-made structure in question shall forthwith report such dumping to the Secretary in such manner and furnish such information in regard thereto as may be prescribed by regulation.

(6) The provisions of subsections (1) to (5) shall, in respect of any South African vessel, aircraft or citizen, apply *mutatis mutandis* also on the high seas, including the fishing zone as defined in section 3 of the Territorial Waters Act, 1963 (Act 87 of 1963).

(7) If any person charged with having committed an offence under subsection (1), as applied by subsection (6), is found within the area of jurisdiction of any court in the Republic which would have had jurisdiction to try the offence if it had been committed within the said area, the court shall have jurisdiction to try the offence.

(8) For the purposes of this section—

**"South African aircraft"** means any aircraft registered in the Republic;

**"South African vessel"** means any vessel registered in the Republic in terms of the Merchant Shipping Act, 1951 (Act 57 of 1951), or deemed to be so registered.

### **3 Permits**

(1) After consultation with a Standing Committee consisting of persons appointed by the Minister for purposes of this section, the Secretary may on application and after taking into account the factors set out in Schedule 3, grant—

(a) a special permit authorizing—

- (i) the dumping, on such conditions as the Secretary may think fit to attach to such permit, of any substance mentioned in Schedule 2;
- (ii) the disposal at sea, on such conditions as the Secretary may think fit to attach to such permit, of any vessel, aircraft, platform or other man-made structure;

(b) a general permit authorizing the dumping, on such conditions as the Secretary may think fit to attach to such permit, of any substance other than that mentioned in Schedule 1 or 2.

(2) An application for any such permit shall be made in such manner and contain such information as may be prescribed by regulation.

(3) If any person to whom any such permit has been granted is convicted of an offence referred to in section 2, the Secretary may cancel such permit or amend it by restricting the dumping or disposal authorized by it.

### **4 Report to Minister**

Within 30 days after the end of each calendar year the Secretary shall, as far as he is able to do so, furnish the Minister with a report regarding such year as to—

(a) the number of permits granted under section 3;

(b) the nature and quantities of all substances or articles—

- (i) authorized by such permits to be dumped or disposed of at sea;
- (ii) the dumping of which was reported in terms of section 2 (5);
- (iii) dumped or disposed of at sea in contravention of the provisions of section 2,

and the location, time and method of the dumping or disposal in question.

### **5 Powers of inspection**

(1) The holder of any office designated by the Minister by notice in the *Gazette* and any police official as defined in section 1 of the Criminal Procedure Act, 1977 (Act 51 of 1977), may-

- (a) enter upon or board any place, premises, vessel or aircraft on or in which he suspects any substance which may afford evidence of a contravention of this Act is kept or loaded, inspect any such substance found on or in such place, premises, vessel or aircraft so entered upon or boarded and open or cause to be opened any article in which he suspects any such substance to be;
- (b) examine all books and documents on or in any such place, premises, vessel or aircraft which he has reason to believe relate to such substance, make copies of or extracts from such books and documents and demand from the owner or custodian of any such book or document an explanation of any record or entry therein;
- (c) if reasonable suspicion exists that an offence under this Act has been committed or attempted or is about to be committed or attempted from or in respect of any vessel or aircraft, require the master or pilot or owner of such vessel or aircraft to move or fly or cause to be moved or flown the vessel or aircraft to any specified harbour or airfield, or, subject to such conditions as may be prescribed by regulation, detain such vessel or aircraft, pending any investigation for the purposes of this Act.

(2) The holder of any office designated under subsection (1) who acts under that subsection, shall at the request of any person affected thereby, produce such proof of his identity as may be prescribed by regulation.

(3) No customs officer authorized to grant clearance to any vessel or aircraft shall grant clearance to any vessel or aircraft while detained in terms of this section.

(4) Any person who-

- (a) hinders, obstructs or assaults a person or police official referred to in subsection (1); or
- (b) wilfully fails to comply with any lawful demand made by such person or official in the performance of his duties or the exercise of his powers,

shall be guilty of an offence.

## **6 Penalties**

(1) Any person shall be liable on conviction of-

- (a) any offence under section 2(1)(a), to a fine not exceeding R250 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment and in addition, if the offence was committed over a period of more than one day, to a fine not exceeding R5 000 or to imprisonment for a period not exceeding six months in respect of every day during which the offence continued;
- (b) any offence under section 2(1)(b), to a fine not exceeding R100 000 or to

imprisonment for a period not exceeding two years or to both such fine and such imprisonment and in addition, if the offence was committed over a period of more than one day, to a fine not exceeding R2 000 or to imprisonment for a period not exceeding two months in respect of every day during which the offence continued;

- (c) any offence under section 2(1)(c) or (5) or 5(4), to a fine not exceeding R5 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment and in addition, in the case of an offence under section 2(1)(c), if the offence was committed over a period of more than one day, to a fine not exceeding R500 or to imprisonment for a period not exceeding 18 days in respect of every day during which the offence continued.

(2) Any master, pilot, owner or person in charge mentioned in section 2(3) shall be liable on conviction of the offence under that section, where such conviction is in pursuance of an offence by any other person—

- (a) under section 2(1)(a), to the penalties prescribed by subsection (1)(a) of this section;
- (b) under section 2(1)(b), to the penalties prescribed by subsection (1)(b) of this section;
- (c) under section 2(1)(c), to the penalties prescribed by subsection (1)(c) of this section in the case of an offence under section 2(1)(c).

## **7 Jurisdiction and evidence**

(1) If any person is charged with having committed any offence under this Act on or in the sea, any court whose area of jurisdiction abuts on or includes any part of the sea may try the charge, and the offence shall, for all purposes incidental to or consequential upon the trying of the charge, be deemed to have been committed within the area of jurisdiction of the court so hearing it.

(2) In any prosecution for a contravention of this Act—

- (a) based on any act alleged to have been performed in a particular area, the act in question shall be deemed to have been performed in such area;
- (b) any information obtained by means of any instrument or chart used to determine any distance or depth, shall be deemed to be correct,

unless the contrary is proved.

## **8 Regulations**

(1) The Minister may make regulations—

- (a) prescribing the form of applications for permits and other documents which may be necessary for the carrying out of the provisions of this Act;
- (b) prescribing the form of such permits and documents, the periods for which they shall be valid and, after consultation with the Minister of Finance, the fees or other charges which shall be paid in connection

therewith and with the said applications;

- (c) prescribing the manner in which water or any other substance used for the cleaning of any vessel or aircraft may be disposed of;
- (d) prescribing the signals to be used or displayed with regard to any dumping under a special or general permit granted under section 3(1)(a)(i) or (b);
- (e) as to any matters which in terms of this Act are required or permitted to be prescribed by regulation,

and, in general, as to all matters which he considers it necessary or expedient to prescribe in order that the purposes of this Act may be achieved.

(2) A regulation may prescribe penalties for any contravention of or failure to comply with its provisions, not exceeding a fine of R5 000 or imprisonment for a period of six months.

#### **9 Amendment of Schedules**

The Minister may from time to time by notice in the *Gazette* amend any Schedule to this Act by any inclusion therein or deletion therefrom.

#### **10 Operation of Act in relation to other laws**

The provisions of this Act shall be in addition to and not in substitution for any other law which is not in conflict with or inconsistent with this Act.

#### **11 Application of Act**

This Act and any amendment thereof shall apply also in respect of the Prince Edward Islands as described in section 1 of the Prince Edward Islands Act, 1948 (Act 43 of 1948).

#### **12 Short title and commencement**

This Act shall be called the Dumping at Sea Control Act, 1980, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

### **SCHEDULE 1 PROHIBITED SUBSTANCES (Section 2)**

1. Organohalogen compounds.
2. Mercury and its compounds.
3. Cadmium and its compounds.
4. Persistent plastics and other persistent synthetic materials.
5. High-level radio-active waste or other high-level radio-active matter prescribed by regulation with the concurrence of the Minister of Mineral and Energy Affairs.
6. Substances in whatever form produced for biological and chemical warfare.

### **SCHEDULE 2**

## **RESTRICTED SUBSTANCES (Section 2)**

1. Arsenic and its compounds.
2. Lead and its compounds.
3. Copper and its compounds.
4. Zinc and its compounds.
5. Organosilicon compounds.
6. Cyanides.
7. Fluorides.
8. Pesticides and their by-products not included in Schedule 1.
9. Beryllium and its compounds.
10. Chromium and its compounds.
11. Nickel and its compounds.
12. Vanadium and its compounds.
13. Containers, scrap metal and any substances or articles that by reason of their bulk may interfere with fishing or navigation.
14. Radio-active waste or other radio-active matter not included in Schedule 1.
15. Ammunition.

## **SCHEDULE 3 FACTORS TO BE TAKEN INTO ACCOUNT IN GRANTING PERMITS (Section 3)**

- a. characteristics and composition of substance
  1. Total amount and average composition of substance dumped (such as per year).
  2. Form – whether solid, sludge, liquid or gaseous.
  3. Properties, namely, physical (such as solubility and density), chemical and biochemical (such as oxygen demand, nutrients) and biological (such as presence of viruses, bacteria, yeasts and parasites).
  4. Toxicity.
  5. Persistence, namely physical, chemical and biological.
  6. Accumulation and biotransformation in biological materials or sediments.

7. Susceptibility to physical, chemical and biochemical changes and interaction in the aquatic environment with other dissolved organic and inorganic materials.
  8. Probability of production of taints or other changes reducing marketability of resources such as fish and shellfish.
- b. characteristics of dumping or disposal site and method of deposit
1. Location (such as co-ordinates of the dumping or disposal area, depth and distance from the coast) and location in relation to other areas (such as amenity areas, spawning, nursery and fishing areas and exploitable resources).
  2. Rate of disposal per specific period (such as quantity per day, per week, per month).
  3. Methods of packaging and containment, if any.
  4. Initial dilution achieved by proposed method of release.
  5. Disposal characteristics (such as effects of currents, tides and wind on horizontal transport and vertical mixing).
  6. Water characteristics (such as temperature, pH, salinity, stratification, oxygen indices of pollution— dissolved oxygen (DO), chemical oxygen demand (COD), biochemical oxygen demand (BOD), nitrogen present in organic and mineral form, including ammonia, suspended matter, other nutrients and productivity).
  7. Bottom characteristics (such as topography, geochemical and geological characteristics and biological productivity).
  8. Existence and effects of other dumpings or disposals which have been made in the dumping or disposal area (such as heavy metal background reading and organic carbon content).
  9. Existence, if any, of adequate scientific basis for assessing the consequences of the dumping or disposal for which permit is sought, as outlined in this Schedule, taking into account seasonal variations.
- c. general considerations
1. Possible effects on amenities (such as presence of floating or stranded material, turbidity, objectionable odour, discoloration and foaming).
  2. Possible effects on marine life, fish and shellfish culture, fish stocks and fisheries, seaweed harvesting and culture.
  3. Possible effects on other uses of the sea (such as impairment of water quality for industrial use, underwater corrosion of structures, interference



with ship operations from floating substances, interference with fishing or navigation through deposit of waste or solid objects on the sea floor and protection of areas of special importance for scientific or conservation purposes).

4. The practical availability of alternative land-based methods of treatment, disposal or elimination, or of treatment to render the matter less harmful for dumping or disposal at sea.